

DEPARTMENT OF FOOD AND AGRICULTURE

FINAL STATEMENT OF REASONS

Hearing Date: No hearing was scheduled by the Department of Food and Agriculture and no hearing was requested by the public regarding this proposal.

Subject Matter of Proposed Regulations: Transporters of Inedible Kitchen Grease

Sections Affected: Adopt Article 49 and Sections 1190, 1190.1, 1190.2, 1190.3 and 1190.4.

Updated Information

The Initial Statement of Reasons (ISR) is included in this file and accurately reflects the final regulatory action taken by the Department of Food and Agriculture (Department). It is updated as follows:

1) 15-Day Notice of Availability of Documents Added to the Rulemaking File

Pursuant to Government Code section 11347.1, the Department published a 15-day notice of the availability of documents added to the rulemaking file. The reasons for the added documents are as follows:

- In section 1190(b), the Department added a reference to the registration application form for transporters of inedible kitchen grease pursuant to Government Code section 11340.9(c). This amendment was noticed for a 15-day comment period and a 15-day notice of availability of documents. The form is entitled, *Inedible Kitchen Grease Transporter Application (Form 79-012A Rev. 12/04)*, and a copy is included in this filing.
- Meeting notice (via electronic mail dated November 2, 2004) and meeting agenda dated November 10, 2004, from the California Environmental Protection Agency (Cal/EPA) Headquarters regarding the removal, transport and disposal of inedible kitchen grease. This document was added to the rulemaking file pursuant to Government Code section 11346.45 regarding pre-notice discussions.
- Electronic mail, dated November 10, 2004, to Dennis L. Thompson, DVM, Chief, Meat and Poultry Inspection Branch, confirming the consideration of recommendations from the November 10, 2004 meeting with Cal/EPA, and representatives from the California Integrated Waste Management Board, local district attorney representatives, and county environmental personnel. This document was added to the rulemaking file pursuant to Government Code section 11346.45 regarding pre-notice discussions.

- Sample regulatory text from the California Integrated Waste Management Board regarding the permitting of waste tire facilities, waste tire hauler registration and tire manifests. This document was added to the rulemaking file pursuant to Government Code section 11346.45 regarding pre-notice discussions.

2) First 15-Day Notice of Modified Text

Pursuant to Government Code section 11346.8, the Department published a 15-day notice of modified text for sections 1190, 1190.1, 1190.2 and 1190.3. The reasons for the modifications are as follows:

Section 1190. Registration and Renewal Requirements.

For clarity purposes, the Department included a reference to the registration application form for transporters of inedible kitchen grease in subsection (b) to inform the public of the form required by the Department. The form is entitled, *Inedible Kitchen Grease Transporter Application (Form 79-012A Rev. 12/04)*, and it is available from the Department upon request. This form was also noticed for a 15-day availability and comment period.

Section 1190.1. Definitions.

Subsection (a) was amended based upon a written comment received. The Department expanded the definition of a "generator" to include any location where grease is collected from a grease trap or interceptor.

Subsection (d) was added based upon written comments to relocate the definition of an "authorized facility" from section 1190.3 to section 1190.1, and was expanded to include a landfill or wastewater treatment facility that has waste discharge requirements that expressly allow treatment or disposal of grease. The Department believes the changes are needed for clarity purposes.

Section 1190.2. Interceptor Waste Removal Manifest.

Subsection (a) was amended based upon a written comment to delete the word "registered" for consistency with terminology used throughout the text. Also, a provision was made to allow the use of forms other than the Department's form in a different paper or electronic format, as long as the required information is included, as approved by the Department.

Subsection (a)(3)(F) was added based upon written comments received to provide requirements for receiving facilities using an automated system.

Subsection (a)(4) was amended based upon written comments received to allow a transporter to maintain all manifests in a paper and/or electronic format in a publicly accessible location for one year.

Subsection (a)(5) was amended based upon written comments received to expand the designated authorized persons that may have access to a transporter's records, and specifies the requirements for disclosure if the records are in paper or electronic format.

Subsection (a)(6) was amended based upon written comments received to require a transporter to submit copies of receipts (in addition to the manifests) to the receiving facility upon request.

Subsection (b) was deleted based upon written comments received, as the Department believes it cannot impose liability upon a receiving facility if a transporter does not have a completed manifest accompanying the shipment. It is the transporter's responsibility to comply with the manifest system requirements.

Subsection (c) was re-lettered to subsection (b).

Section 1190.3. Interceptor Waste Removal Receipts.

Subsection (a) was amended based upon written comments received to specify that transporters shall document the amount of interceptor waste removed, and if permitted under local authority, the total quantity of gray water reinserted into a grease interceptor or trap.

Subsection (b) was amended based upon written comments received to clarify the type of form the Department may provide to a transporter for their use. The manifest is the top of the page, and the bottom of the page contains the receipts. The transporter is to leave the receipt or a copy of the receipt with the generator when the grease is collected under specified conditions.

Subsection (c)(3) was added based upon written comments received to clarify that if a form, other than the Department's Form 79-120, *Interceptor Waste Transporter Manifest and Receipt*, is used, that the receipt have a unique number and the numbering system shall be submitted for approval to the Department prior to its use.

Former subsection (c)(3) was renumbered to (c)(4).

Subsection (c)(5) was added based upon written comments received to include the working capacity of the grease interceptor or trap to reconcile the volume of solids, gray water and grease removed.

Subsection (c)(4) was renumbered to (c)(6) and amended to delete the word "estimated" regarding the volume or quantity of waste removed, as a commenter believed the original wording could invite fraud if the volume was estimated.

Subsection (c)(5) was renumbered to (c)(7) and amended based upon written comments received. The transporter is to document the volume or quantity of gray

water reinserted into a grease interceptor or trap only if permitted under local authority, and the word "estimated" was deleted for consistency with subsection (c)(6). The transporter is to document the actual volume or quantity of gray water removed, and not estimate the amount to deter fraud in this area.

Subsection (c)(6) was renumbered to (c)(8) and the definition of authorized receiving facilities was deleted and moved to section 1190.1 based upon written comments received.

Subsection (c)(7) was renumbered to (c)(9).

Subsection (c)(8) was renumbered to (c)(10).

3) Second 15-Day Notice of Modified Text

Pursuant to Government Code section 11346.8, the Department published a second 15-day notice of modified text for sections 1190.1, 1190.2 and 1190.3. The reasons for the modifications are as follows:

Section 1190.1. Definitions.

Subsection (c) was deleted based upon a written comment received. The term "gray water" is an inappropriate reference to the water portion of grease waste that is removed from an interceptor or trap.

Subsection (d) was re-lettered to subsection (c) and amended based upon written comments received. For clarity purposes, the Department is specifying that an authorized receiving facility includes a publicly owned treatment works that accepts the direct receipt of transported grease waste.

Section 1190.2. Interceptor Waste Removal Manifest.

The Department corrected a numbering error for subsection (a). The numbering should be (a)(1) through (5) instead of (a)(2) through (6).

Subsection (a)(4) was amended based upon written comments received to specify that any officer of a local sewer authority may also review all manifests and receipts of a transporter.

Section 1190.3. Interceptor Waste Removal Receipts.

Subsection (a) was amended based upon written comments received to specify that the water portion of interceptor waste may be reinserted into the interceptor or grease trap if permitted under local authority, as specified.

For consistency purposes, subsection (c)(7) was amended to specify that the water portion of the interceptor waste may be reinserted into the interceptor or grease trap if permitted under local authority, as specified.

4) Updated Reporting Requirement

The reporting requirement was amended in this proposal, via a 15-day notice of modified text for section 1190.2(b). The Department eliminated the mandatory reporting by an authorized receiving facility if a transporter disposes of grease waste at the facility absent a manifest. The Department believes it is the responsibility of the transporter to maintain the manifest and receipts pursuant to section 1190.2. However, individuals and businesses engaged in the business of transporting inedible kitchen grease are still required to maintain paperwork, and submit reports and records to the Department, or other authorized person or agency, as specified, pursuant to the requirements of this proposal and Food and Agricultural Code sections 19303, 19304 and 19306.

5) Initial Statement of Reasons (ISR)

The Department is further clarifying the factual basis and rationale in the ISR for the manifest system (sections 1190.2 and 1190.3). This manifest system was based primarily on pre-notice discussions with Cal/EPA, the California Integrated Waste Management Board, and sample regulatory text on the permitting of waste tire facilities, waste tire hauler registration, and tire manifests. This information was added to the rulemaking file and properly noticed to the public for a 15-day availability and comment period pursuant to Government Code section 11347.1.

6) New Legislation Effective January 1, 2006

Following the publication of the two 15-day notices of modified text, the Department made the following conforming changes to this proposal pursuant to AB 1065 (Stats. 2005, Ch. 533, effective January 1, 2006):

- The adoption of section 19316.5 of the Food and Agricultural Code further authorizes the Department to establish a system for documenting and tracking the transportation of inedible kitchen grease in order to ensure the proper disposal or recycling of that material. This statute was added to the reference citations in sections 1190.2 and 1190.3.
- Amend section 1190(c) to include, as a condition of registration and renewal, that transporters of inedible kitchen grease shall submit to the Department proof of a policy of insurance or surety bond pursuant to section 19310 of the Food and Agricultural Code.
- Amend section 1190.2 to extend the record keeping requirement from one year to two years pursuant to section 19303 of the Food and Agricultural Code.

7) Nonsubstantive Changes

Following the publication of the two 15-day notices of modified text, the Department made the following nonsubstantive changes for clarity and accuracy purposes:

Section 1190. Registration and Renewal Requirements.

The Department corrected a subsection designation error and clarified the authority citation as section 407 of the Food and Agricultural Code, and the reference citations are sections 19303, 19304, 19305, 19306, 19310, 19310.5, 19310.7, 19311, 19312, 19315 and 19316.

Section 1190.1. Definitions.

For consistency and clarity purposes, the authority citation is section 407 of the Food and Agricultural Code, and the reference citations are sections 19303, 19304, 19305, 19306, 19310, 19310.5, 19310.7, 19311, 19312, 19313.8, 19315 and 19316.

Sections 1190.2. Interceptor Waste Removal Manifest and Section 1190.3. Interceptor Waste Removal Receipts.

For consistency and clarity purposes, the authority citation is section 407 of the Food and Agricultural Code, and the reference citations are sections 19303, 19304, 19305, 19306, 19310, 19310.5, 19310.7, 19311, 19312, 19313.1, 19313.8, 19315, 19316 and 19316.5.

The Department also made a nonsubstantive change based upon a written comment received for section 1190.2(a)(3). The Department did not change the wording, only moved text to specify that receipts as well as manifests may be kept in paper and/or electronic formats. This change is consistent with the intent of this proposal, to allow the same record keeping criteria for both manifests and receipts.

Section 1190.4. Violations.

For consistency and clarity purposes, the authority citations are sections 407 and 19314 of the Food and Agricultural Code, and the reference citations are sections 19303, 19304, 19305, 19306, 19310, 19310.5, 19310.7, 19311, 19312, 19313.1, 19313.8, 19315, 19316, 19440, 19443, 19444, 19445, 19446 and 19447.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Business Impact

The Department has determined that this proposal would not have significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Department believes that this proposal is consistent or meets the industry standards and practice for the removal, transport and disposal of grease waste in California.

This proposal affects individuals and businesses engaged in the business of rendering, operating a collection center, or transporting inedible kitchen grease. This proposal includes a paperwork requirement, reporting requirement and a record keeping requirement. The reporting requirement was amended in this proposal to eliminate the mandatory reporting of a facility authorized to receive grease waste to report to the Department that a transporter did not complete a manifest. The transporter is to maintain the manifest and receipts (or copies), and provide a report to the Department, or other authorized person or agency, upon request. The paperwork requirement may consist of postage costs if a transporter mails paperwork to a food facility indicating the quantity or volume of grease waste removed. The paperwork, reporting, and record keeping requirements are necessary for persons or businesses transporting inedible kitchen grease. This documentation will enable the Department to track that grease waste is removed and disposed of properly to prevent blockages in sewer systems that could adversely affect human health and the environment.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action described in this filing.

Summary of Objections/Recommendations/Responses

The Department is listing all comments received in the order listed in the rulemaking file so they may be easily referenced. Following the list of comments are the Department's responses. The responses relate to the originally proposed language and the first and second modified text, as indicated.

Written Comments Received Regarding the Availability of Documents Added to the Rulemaking File

No written comments were received regarding the documents added to the rulemaking file.

***List of Written Comments Received Regarding the
Originally Proposed Language***

A) Letter dated May 17, 2005, Morgana Trenholm, Atlas Pumping Service, suggested wording changes to section 1190.3(a) because it implies that the process of reinserting gray water into a grease trap is allowed and condoned everywhere as long as it is documented.

B) Letter dated May 19, 2005, Howard Levenson, Ph.D., California Integrated Waste Management Board, believes that recent enforcement cases indicate that the practice of reinserting gray water back into the interceptor could allow an unscrupulous transporter to mismanage interceptor pumpings. They recommend prohibiting the reinsertion of anything into the interceptor or sewer, except at a licensed treatment or disposal facility. The prohibition of reinsertion would also allow a restaurateur to easily verify that the interceptor was pumped clean.

C) Electronic mail dated May 24, 2005, James Morrisroe, Elsinore Valley Grease, believes that there should be a six-month grace period to try these new proposals before the Department enacts them; he believes that corporations have asked for tax credits, grants, loans, legislation to increase the time to do business, and add to the cost of doing business, which benefits corporations, but is bad for small business. He suggested one license for small businesses for the state, exempt from all city and county fees. He also suggested renderers who buy grease should post paid prices, a list of the companies who buy kitchen oil and grease from peddlers and corporations. He believes that the integrity of the rendering industry and the agriculture department should be maintained by sticking to the job of getting all the waste picked up at the lowest possible cost and keeping the environment clean.

D) Electronic mail dated June 1, 2005, Bryan Brock, P.E., Office of Statewide Initiatives, stated that he is withdrawing his written comment stating that his organization will defer to the comments submitted by the California Integrated Waste Management Board.

E) Letter dated June 3, 2005, Gale Filter, Deputy Executive Director, California District Attorneys Association, is in support of the Department's decision to issue regulations requiring a system of receipts and manifests for the transportation of interceptor waste from grease interceptors and grease traps. However, he listed the following objections to this proposal: 1) The regulations should apply to all transporters, whether registered or not; 2) The receipt given to each generator should be uniquely numbers and tied to the manifest it accompanies; 3) The volume recorded should be as accurate as possible; 4) The receipts should at all times accompany the manifest and should be available to law enforcement at any time; 5) The receipts and manifests need to be submitted to the Department on a regular periodic basis; 6) The manifests and receipts need to be kept for longer than one year; 7) The reference to "gray water" should be dropped; 8) Any confusion about intent should be removed in the description of the penalty section of the regulation.

The California District Attorneys Association also suggested the following wording changes:

Gray water should be deleted from section 1190.1;

The words "registered" and "estimated" should be deleted from section 1190.2 and records should be kept for three years. This section should also require the submittal of manifests and receipts to the Department on a regular basis, and the Department should require the availability and submission of receipts as well as the manifest and each receipt should have its own unique number keyed into the manifest.

In section 1190.3, the reference to the reinsertion of gray water should be deleted. The grease hauler should also be required to leave one copy of the receipt with the generator, and the definition of authorized receiving facilities be amended to include landfills and wastewater treatment facilities that have Waste Discharge Requirements that expressly allow treatment or disposal of grease.

F) Letter dated June 3, 2005, Linda Sheehan, Executive Director, California Coastkeeper Alliance, is in support of the proposal to require a system of receipts and manifests for the transportation of interceptor waste from grease interceptors and grease traps. Ms. Sheehan recommended the following changes to this proposal:

1) The receipt given to each generator should be uniquely numbered and tied to the manifest it accompanies; 2) The receipts should at all times accompany the manifest and should be equally available to law enforcement; 3) The receipts and manifests need to be submitted to the Department on a regular periodic basis; 4) The manifests and receipts need to be kept for longer than one year; 5) The reference to gray water should be dropped; 6) The definition of authorized receiving facility needs to be broadened.

The California Coastkeeper Alliance also suggested the following wording changes:

Section 1190.1, the definition of generator should be broadened and the reference to gray water removed.

Section 1190.2, records should be kept for three years, the manifests and receipts should be submitted to the Department on a regular basis and may be submitted electronically. There should be a requirement for the availability and submission of receipts as well as the manifest. Each receipt should have its own unique number keyed to its corresponding manifest.

Section 1190.3, the reference to the reinsertion of gray water should be deleted, and suggest the following definition of an authorized receiving facility, "renderers and collection centers authorized by the department, or a permitted landfill or wastewater treatment facility with Waste Discharge Requirements from a Regional Water Quality Control Board which expressly allow the receipt and treatment or disposal of interceptor grease and associated greasy water."

G) Letter dated June 6, 2005, Dario Frommer, Assembly Majority Leader, Assembly, California Legislature, commended the Department for following through on this directive to issue regulations requiring a system of receipts and manifests for the transportation of interceptor waste from grease interceptors and grease traps. However, Assemblyman Frommer made the following recommendations: In the Department's Initial Statement of Reasons (ISR), the factual basis does not acknowledge the 27 grease hauler prosecutions district attorneys have brought since 2001, as those prosecutions were the basis for legislation calling for the regulations; health, safety and environmental damage concerns are not discussed, and recommend these be included in the ISR.

Assemblyman Frommer suggested the following changes to the regulatory text: 1) The receipt given to each generator should be uniquely numbered and tied to the manifest it accompanies; 2) The receipts should at all times accompany the manifest and should be equally available to law enforcement; 3) The receipts and manifests need to be submitted to the Department on a regular periodic basis; 4) The retention time of the manifests and receipts must be extended to at least three years; 5) Any reference to gray water should be dropped; 6) The definition of an authorized receiving facility must be broadened; 7) Insurance requirements must be strengthened.

Assemblyman Frommer further stated that it is unclear if Cal/EPA had any significant input in the process to develop the regulations. In the Governor's veto message of AB 2633 (Frommer), he asked the Department to develop the regulations in cooperation with Cal/EPA. Assemblyman Frommer requested documentation of this collaboration with Cal/EPA and their feedback on the proposed regulations.

H) Letter dated June 6, 2005, Peter H. Weiner of Paul, Hastings, Janofsky and Walker, is in support of the Department's decision to issue regulations requiring a system of receipts and manifests for the transportation of interceptor waste from grease interceptors and grease traps. However, he listed the following objections to this proposal: 1) The receipt given to each generator should be uniquely numbered and tied to the manifest it accompanies; 2) The receipts should at all times accompany the manifest and should be equally available to law enforcement; 3) The receipts and manifests need to be submitted to the Department on a regular periodic basis; 4) The manifests and receipts need to be kept for longer than one year; 5) The reference to "gray water" should be dropped; 6) The definition of authorized receiving facility needs to be broadened.

Mr. Weiner offered the following recommended changes to the proposal:

Section 1190.1, the definition of generator should be broadened, and the reference to gray water should be removed.

Section 1190.2, the manifest form is not yet available; therefore, companies should have the ability to generate their own form electronically. Records should be kept for three years; the Department should require the submittal of manifests and receipts on a regular basis and they should be allowed to be submitted electronically; should require

availability and submission of receipts as well as the manifest, and each receipt should have its own unique number keyed to its overall manifest.

Section 1190.3, The reinsertion of gray water should be deleted, and suggest the following definition of an authorized receiving facility, "renderers and collection centers authorized by the department, or a permitted landfill or wastewater treatment facility with Waste Discharge Requirements from a Regional Water Quality Control Board which expressly allow the receipt and treatment or disposal of interceptor grease and associated greasy water."

I) Letter dated June 6, 2005, Celeste Cantu, Executive Director, State Water Resources Control Board, made the following recommendations: 1) The allowance for reinsertion of gray water back into the interceptor should be prohibited; 2) Authorized receiving facility definition is unclear, suggest the following: "Authorized receiving facility means any facility that has obtained a license, permit, or waste discharge requirements as required or recognized by California State law to operate a wastewater treatment plant, landfill, rendering plant, collection center, or other state authorized receiving facility."; 3) Manifest system and information availability, recommend an online database that could be transmitted to county health and collection system agencies for their electronic use.

J) Electronic mail dated June 6, 2005, Trish Maguire (for Sharon Green), East Bay Municipal Utility District, Environmental Service Division, is encouraged that the Department is proposing to adopt manifesting regulations to ensure the safe transport and proper disposal of inedible kitchen grease. The following recommendations were made to the proposal, including corresponding changes to the Department's *Interceptor Waste Transporter Manifest and Receipt (Form 79-120, Est. 3/05)*:

Section 1190.1, Publicly Owned Treatment Works should be added to the list of definitions under "authorized facilities" as approved to receive grease interceptor waste.

Section 1190.2, requires that the authorized facility receiving the interceptor waste to complete a portion of the manifest and sign it. Recommend that the transporter be required to complete this portion of the manifest. Receiving facilities should not have the responsibility to verify information provided on the manifest, nor have to provide the qualified staff to oversee this activity. This could have significant staffing and cost impacts to receiving facilities. Also, copies of manifests and receipts should be maintained for three years; Publicly Owned Treatment Works should be added as an authority to demand transporters to immediately make available their manifests for review and require transporters to provide all other requested manifests within five business days; liability is not clear if a receiving facility accepts grease waste without a properly maintained manifest form, suggest deleting this requirement in the text.

Section 1190.3, modify this section to require transporters, to the extent feasible, to completely remove all grease, greasy liquid, solids, and matter from the grease interceptor or grease trap each time of cleaning, and to prohibit the reinsertion of gray water unless specifically allowed by the local sanitation district or county having jurisdiction over the pumping and disposal of the material. Suggest also that

transporters be required to document the interceptor size being services to allow for reconciliation of interceptor size, interceptor volumes pumped and total volume delivered on manifests; delete the definition of an authorized received facility and move to section 1190.1.

K) Electronic mail dated June 6, 2005, Richard Matteis, Executive Vice President, California Grain and Feed Association, made the following recommended changes to the proposal: 1) Transporters should be allowed to generate their own manifests and allow companies to utilize existing computer systems and programming; 2) The regulations should allow for paperless systems to collect and maintain data; 3) Section 1190.2(a)(5) requires the transporter to immediately make available any manifests completed with the past five days. Is it intended for manifests to be maintained on the service trucks for five days or is the requirement that they be immediately available at the company's office? 4) In section 1190.3(a) the word "estimated" should be inserted before the words "total quantity" in two places, as there is no means on the truck of exactly quantifying material. They also requested that if the regulations are adopted that they be actively enforced so that all companies are complying with the new rules.

L) Letter dated June 6, 2005, Mitchell A. Ebright, Vice President and General Counsel, Baker Commodities, Inc., made the following recommended changes to the proposal: 1) Transporters should be allowed to generate their own manifests and allow companies to utilize existing computer systems and programming; 2) The regulations should allow for a fully electronic manifesting system; 3) Each transporter/collector could be given a unique series of manifest numbers to facilitate an electronic system; 4) Section 1190.2(a)(5) requires the transporter to immediately make available any manifests completed within the past five days. Is it intended for manifests to be maintained on the service trucks for five days or is the requirement that they be immediately available at the company's office? If so, this could result in the manifest getting lost or damaged; 6) In section 1190.3(a) the word "estimated" should be inserted before the words "total quantity" in two places; 7) There should be active policing of the manifesting requirements after they are adopted.

M) Electronic mail dated June 6, 2005, Terrie Mitchell, Manager, Stakeholder Relations, Sacramento Regional County Sanitation District, is encouraged that the Department is proposing to adopt manifesting regulations to ensure the safe transport and proper disposal of inedible kitchen grease. The following recommendations were made:

Section 1190.1, Publicly Owned Treatment Works should be added to the list of definitions under "authorized facilities" as approved to receive grease interceptor waste.

Section 1190.2, requires that the authorized facility receiving the interceptor waste complete a portion of the manifest and sign it. Recommend that the transporter be required to complete this portion of the manifest. Receiving facilities should not have the responsibility to verify information provided on the manifest, nor have to provide the qualified staff to oversee this activity. This could have significant staffing and cost impacts to receiving facilities. Also, copies of manifests and receipts should be maintained for three years; Publicly Owned Treatment Works should be added as an

authority to demand transporters to immediately make available their manifests for review and require transporters to provide all other requested manifests within five business days; liability is not clear if a receiving facility accepts grease waste without a properly maintained manifest form, suggest deleting this requirement in the text.

Section 1190.3, modify this section to require transporters, to the extent feasible, to completely remove all grease, greasy liquid, solids, and matter from the grease interceptor or grease trap each time of cleaning, and to prohibit the reinsertion of gray water unless specifically allowed by the local sanitation district or county having jurisdiction over the pumping and disposal of the material. Suggest also that transporters be required to document the interceptor size being serviced to allow for reconciliation of interceptor size, interceptor volumes pumped and total volume delivered on manifests; delete the definition of an authorized receiving facility and move to section 1190.1.

Finally, the commenter encourages the Department to establish a web-based database that would include a listing of the registered transporters, authorized receiving facilities and enforcement actions. This information would be useful for local sewer collection agencies and Publicly Owned Treatment Works to work together to ensure grease waste is managed properly.

The Department's Responses to the Comments Listed Above by Subject Area Regarding the Originally Proposed Language

1) Gray Water

Comments (A), (B), (E), (F), (G), (H), (I), (J) and (M): The reinsertion of gray water into interceptors or grease traps should be prohibited or dropped from this proposal. The regulation implies that this process, known as "decanting" is condoned everywhere in the state as long as it is documented.

Rejected, in part. Gray water is water that has been used in residential homes, restaurants, stores, etc., except water from toilets. Dish, shower, sink, and laundry water comprise 50 to 80% of residential waste water. This may be reused for other purposes, such as, landscape irrigation. Gray water, or the water portion of grease waste, is also derived from these sources.

The Department lacks the statutory authority to regulate gray water associated with the removal and transportation of inedible kitchen grease. One comment indicated that there is current legislation proposing to prohibit the reinsertion of gray water into interceptors or grease traps; however, the Department is not aware that any such law has yet been enacted.

Food and Agricultural Code section 19216 defines inedible kitchen grease as any fat or used cooking greases and oils obtained from any source. Therefore, the Department cannot require grease transporters to carry gray water along with the grease to an authorized receiving facility. The Department also cannot require such

a facility to accept it. Also, it should be noted that the Department lacks statutory authority to require restaurants, or other food preparation facilities, to have their interceptors or grease traps periodically maintained and the grease waste properly reused or disposed. However, some city municipal codes do require interceptors to be installed and maintained regularly (e.g., Upland Municipal Code section 5860.5), and require that installation and design conform to the Uniform Plumbing Code 2000.

The Department has, within the limits of its statutory authority, published a 15-day notice of modified text for section 1190.3 to clarify that transporters shall document the total quantity of interceptor waste removed from any grease interceptor or grease trap, and, if permitted under local authority, the total quantity of gray water reinserted into a grease interceptor or grease trap, if any, through receipts. This amendment places the responsibility upon the transporter to ensure their city, county, or water quality district authorities allow the reinsertion of gray water into interceptors or grease traps. The Department's manifest system, as amended, reconciles the amount of interceptor waste initially removed from the interceptor or trap, with the amount of gray water reinserted, and the amount of interceptor waste retained, transported, and delivered to a receiving facility.

2) Definition of an Authorized Receiving Facility

Comments (F), (G), (H), (I), (J) and (M): The definition of an authorized receiving facility should be broadened, clarified, and publicly owned treatment works should be included in the definition.

Accepted, in part. The Department published a 15-day notice of modified text to remove the definition of an authorized receiving facility from section 1190.3 (Interceptor Waste Removal Receipts) and place it under section 1190.1 (Definitions). The Department expanded its definition of an authorized receiving facility to include a landfill or wastewater treatment facility. The Department believes this amendment now includes publicly owned treatment works.

3) Manifests and Receipts

Comments (E), (F), (G), (H) and (K): The receipt given to each generator should be uniquely numbered and tied to the manifest it accompanies; each manifest should have unique numbers.

Accepted. The Department published a 15-day notice of modified text for sections 1190.2 and 1190.3 to allow the use of a transporter's own form. The manifest and receipt format and numbering system must be approved by the Department to avoid any duplication of numbers for each transporter. If a transporter uses the Department's form, a unique manifest and receipt number is not needed. The Department's form will include preprinted numbers, and no carbon copies are needed because the top page is automatically copied to the second page. The first

page contains removable receipts, one of which may be left with the generator. The copy on the second page is retained by the transporter.

4) Receipts Made Available to Law Enforcement

Comments (E), (F), (G), (H) and (J): Receipts should at all times accompany the manifest and should be equally available to law enforcement.

Accepted. The Department published a 15-day notice of modified text for sections 1190.2 and 1190.3. Section 1190.2(a)(5) and (6) requires transporters to have the receipts or copies of receipts, in addition to manifests, available upon request to the specified authorities. Section 1190.3(b) requires receipts to be attached to the front of the manifest unless the transporter used the Department's form, which incorporates a copy of the receipt.

5) Manifests and Receipts Submitted to the Department

Comments (E), (F), (G) and (H): Manifests and receipts need to be submitted to the Department on a regular periodic basis.

Rejected. At this time, the Department does not have the necessary resources to develop a system to maintain copies, either in electronic or paper format, of all manifests and receipts that would be submitted by transporters. Thousands of grease traps exist in the state and hundreds of businesses service the grease traps. However, the Department, or any law enforcement or regulatory official, as specified, can access the transporter's records pursuant to section 1190.2.

6) Record Retention Period

Comments (E), (F), (G), (H), (J) and (M): Manifests and receipts should be kept for longer than one year. The Department should extend this requirement to three years to ensure that necessary prosecution is not hampered. Just as the statute is silent on the authority to require a manifest, the Department nevertheless has inherent authority to issue regulations appropriate to its mandate and should require records to be maintained for three years.

Rejected. Existing Food and Agricultural Code section 19303(b) is clear in requiring a transporter to keep records for a maximum of one year. New legislation was enacted to extend this period to two years (AB 1065, Stats. 2005, Ch. 533). This bill becomes effective on January 1, 2006. At that time, (and providing that this proposal is approved by the Office of Administrative Law), the Department will promulgate a rulemaking action, pursuant to section 100 of Title 1 of the California Code of Regulations, to conform its regulations to the new record retention period. However, if there is an enforcement action initiated by the Department (section 1190.4), or a law enforcement agency, all records relating to the alleged violation are routinely subpoenaed and maintained by law enforcement or the court system until the matter can be adjudicated.

7) Completion of the Manifest by Authorized Receiving Facilities

Comments (J) and (M): Authorized receiving facilities should not have to complete part of the manifest; the transporter should complete the authorized receiving facility part of the manifest.

Rejected, in part. The intent of this proposal is to document the collection, transport, and disposal of interceptor waste through a manifest system. Each party in the chain (generator/transporter/receiving facility) must validate the amount of interceptor waste transported. However, the Department published a 15-day notice of modified text for section 1190.2(a)(3)(F) to make a provision for a receiving facility that uses an automated system. The Department is only making an exception for the signature block of the manifest for receiving facilities that are automated. Whether a receiving facility uses a manual or automated system, they must have a procedure in place to document the date and time the grease waste is received, name of the receiving facility, the transporter's vehicle decal serial number, and the volume of grease waste received.

8) Availability of Manifests and Other Documents

Comments (J) and (M): It should be clarified that publicly owned treatment works and sewer collection agencies have the authority to demand transporters immediately make available their manifests for review, and require transporters to provide all other requested manifests within five business days.

Rejected, in part. The existing text, section 1190.2(a)(6) already specifies that the transporter shall submit copies of the manifest to the receiving facility upon request. The Department amended this section by publishing a 15-day notice of modified text to specify that receipts, along with the manifests, must be provided upon request to a receiving facility.

As specified in section 1190.2(a)(5), only a Departmental employee, California Highway Patrol, any peace officer as defined in section 830.1 or 830.2 of the Penal Code, or any local public officer designated by the Department may have immediate access to a transporter's manifests completed within the past five days. All other manifests and receipts shall be made available within 24 hours. The Department published a 15-day notice of modified text for this section to include a county or city environmental health officer or district attorney in the list of persons authorized to have immediate access to all manifests and receipts maintained by a transporter.

Additionally, as stated in section 1190.2, the Department believes that it is necessary for the transporter to make all other manifests and receipts available to authorized persons within 24 hours of the request, instead of five business days, as the comments suggest. This is intended to avert any fraudulent manipulation of the documents requested should an incident or question arise regarding the transportation of inedible kitchen grease.

Section 1190.2(a)(4) specifies that the transporter must keep all records for one year, and subsection (a)(6) specifies that a copy of the manifest and receipts must be provided by the transporter to the receiving facility upon request (no time limit imposed). The Department believes these time frames are adequate and consistent with the existing statutory requirements for record keeping and disclosure. However, as previously stated, if this rulemaking action is approved by the Office of Administrative Law, the Department will conform its record keeping requirement to the new retention period specified in AB 1065, Stats. 2005, Ch. 533, which becomes effective January 1, 2006.

9) Working Capacity of the Grease Interceptor or Trap

Comments (J) and (M): The manifest and receipt should list the total working capacity of the grease interceptor or trap. This allows for reconciliation of interceptor size, volume pumped, and total volumes entered on the manifest.

Accepted. The Department published a 15-day notice of modified text for section 1190.3 to include a requirement that the transporter document the total working capacity of the grease interceptor or trap. The manifest, as amended by the 15-day notice, now includes a section for the transporter to document the total working capacity of the interceptor. The revised form has a section to indicate the capacity of the interceptor or trap, the volume of grease waste removed (pumped), the volume of gray water returned to the interceptor or trap, and the total waste removed and transported.

10) Use of Forms

Comments (H), (K) and (L): The regulations should allow transporters to generate their own manifests, if those manifests contain the same information required by the Department. This will allow companies to utilize existing computer systems and programming.

Accepted. The Department published a 15-day notice of modified text for sections 1190.2 and 1190.3 to include a provision for transporters to utilize their own forms or numbering systems, providing they receive prior approval from the Department.

11) Establishing a Database

Comments (I), (J), (K), (L) and (M): The Department should establish a database that would include a listing of the registered transporters, authorized receiving facilities and enforcement actions; allow for the transmittal of manifests and receipts electronically to the Department or to county health and collection system agencies.

Rejected. The Department has in place a database listing all of the registered transporters in the state. However, at this time, the Department does not have the resources to fund a project to track the number of authorized receiving facilities in

the state, or track all state or county enforcement actions, other than those involving the Department. The Department also cannot mandate a transporter transmit their manifests and receipts electronically to any county health or collection system agency. However, section 1190.2 requires the transporter to provide records to the Department, or other authorized persons or agencies, as specified, upon request.

12) Fully Electronic Manifest System

Comments (K) and (L): The Department should provide for a fully electronic manifest system. The transporter would enter manifest information into an onboard electronic device that is later fed into a corporate database. The paper manifest would be provided upon request.

Rejected, in part. The Department does not believe a fully electronic manifest system is a valid suggestion. For enforcement purposes, a highway patrol officer, and/or other officers or officials authorized to demand to view current manifests, must be able to view, onboard the vehicle, all manifests completed by the transporter within five days of collection of the grease waste. It could invite fraud if the transporter would be allowed to delay the officer making the request to print out a paper copy at a later time. However, the Department published a 15-day notice of modified text for section 1190.2 to clarify that if the manifest is maintained onboard the transporting vehicle in an electronic format, the transporter shall be able to electronically display or print out, onboard the vehicle, all information from manifests completed in the past five days.

13) Estimating the Volume of Grease Waste Removed From Interceptors or Traps

Comments (E), (K) and (L): The word "estimated" in the proposal relating to the volume of grease waste removed, transported and delivered, should be added as there is no means on the truck of exactly quantifying material; the word "estimated" should be dropped as the volume recorded should be as accurate as possible; the word "estimated" with volume is an invitation to fraud. If there are problems at the margin of knowing exactly how much grease waste was pumped, there should be some language to indicate that the volume should be recorded as exactly as is feasible in light of the technology.

Accepted, in part. The Department did include the word "estimated" in the originally proposed language in relation to recording the volume of grease waste removed from an interceptor or trap and transported to a receiving facility. However, the Department agrees with the comments that recommended the word "estimated" be removed from the text. The quantities of grease waste should be measured as accurately as possible. Therefore, the Department published a 15-day notice of modified text for sections 1190.2 and 1190.3 deleting the word "estimated" regarding the recording of the volume or quantity of grease waste removed, transported, and delivered.

14) Enforcement of Regulations

Comments (K) and (L): If the regulations are adopted, they should be actively enforced so that all companies are complying with the new rules; there should be some form of actively policing of the manifesting requirements after they are adopted.

Accepted. The Department agrees with the comments and has in place the Rendering Enforcement Program pursuant to sections 19300, 19300.5, and 19310 et seq., Food and Agricultural Code.

The mission of the program is to deter theft of inedible kitchen grease and related fraud; raise awareness of many key law enforcement officials about the program; provide information about the program to those doing legal and illegal business with kitchen grease as part of the effort to gain compliance; create an environment which enables legal renderers of kitchen grease to maintain or increase their volume of grease business; and increase knowledge of rendering industry and increase rapport with key industry personnel. Any person that is engaged in the business of rendering (including the recycling of grease waste or operating a collection center) must have each place of business licensed by the Department.

If anyone is found to be in violation of the statutes or regulations relating to the Rendering Enforcement Program, or the requirements of this proposal (if approved by the Office of Administrative Law), the Department has the authority to pursue violators pursuant to Food and Agricultural Code sections 19302, 19306, 19312, 19314 and proposed section 1190.4 of Title 3 of the California Code of Regulations.

15) Availability of Records

Comments (K) and (L): Section 1190.2(a)(5) requires transporters to make immediately available any manifest completed within the past five days. Does this mean they must be maintained on the truck, or does it mean they must be immediately available at the company's office? If they are to be maintained on the vehicle, they will get lost or damaged to the extent that they are not legible.

Yes, the manifests and receipts completed within the past five days of collection of the grease waste must be kept in the vehicle. If any question arises or incident occurs regarding the hauling of grease waste, the California Highway Patrol, or other officer or official, must be able to immediately inspect the transporter's manifests and receipts on-site. Any delays could invite fraudulent manipulation of the manifests or receipts.

***Department's Responses to Comments on Other Issues
Regarding the Originally Proposed Language***

16) Comment (C), James Morrisroe, Elsinore Valley Grease:

(a) There should be a six-month grace period to try these new proposals.

Rejected. The Department is establishing a new form, *Interceptor Waste Transporter Manifest and Receipt Form 79-120 (Est. 3/05)*, to track the pickup and disposal of grease waste, and to track the volume and quantity of the waste removed from food facilities. As stated in the ISR, compliance with this new tracking and reporting requirement will be handled administratively. The Department will inform new applicants for registration at the time they apply and receive their registration certificate. Existing registrants will be informed of these provisions within 30 days of the approval of this proposal by the Office of Administrative Law. Since many rendering companies and registered transporters already have a tracking system in place, the Department published a 15-day notice of modified text to allow transporters to either use the Department's form, or they may use their own forms, upon prior approval by the Department.

(b) Corporations have asked for tax credits, grants, loans, and legislation to increase the time to do business, and to add to the cost of doing business, which benefits corporations, but is bad for small business.

Rejected. This comment is outside the scope of the notice for this proposal. The Department does not have the authority to regulate tax credits, loans, etc., of corporations or the costs for small businesses.

(c) There should be one license for small businesses for the state, exempt from all city and county fees.

Rejected. Existing law does not require licensure for transporters of inedible kitchen grease. Existing laws establish a registration requirement for transporters, and licensure for authorized facilities to receive grease waste (i.e., renderers and collection centers). The Department does not have the authority to exempt small businesses from city and county fees.

(d) Renderers who buy grease should post paid prices and a list of the companies who buy kitchen oil and grease from peddlers and corporations.

Rejected. The Department does not have the authority to require renderers to post the prices they pay for grease waste, or to publicly list the companies who buy kitchen oil and grease from peddlers or corporations. However, Food and Agricultural Code section 19303(a) requires licensed renderers to retain records, in connection with inedible kitchen grease, of the name, address, and registration number of every transporter of inedible kitchen grease who has delivered that material to the renderer, the total amount of inedible kitchen grease purchased in

each transaction, and the date of each transaction. The records must be kept at the regular place of business of every licensed renderer, collection center operator, and every registered transporter, and the records shall be exhibited on demand to any peace officer or any employee of the Department pursuant to section 19304.

(e) The integrity of the rendering industry and the agriculture department should be maintained by sticking to the job of getting all the waste picked up at the lowest possible cost and keeping the environment clean.

Accepted, in part. The Department agrees that it is important that grease waste is properly removed and disposed of; however, it does not have the statutory authority to regulate the cost of picking up grease waste from food facilities.

17) Comment (E), Gale Filter, Deputy Executive Director, California District Attorneys Association:

(a) The regulations should apply to all transporters, whether registered or not.

Accepted, in part. It is unlawful for any person or entity to transport inedible kitchen grease without being registered with the Department and without being in possession of a valid registration certificate issued by the Department (sections 19310, 19310.5, 19310.7 and 19311, Food and Agricultural Code). However, the Department published a 15-day notice of modified text to delete the word "registered" when referring to a transporter of inedible kitchen grease for wording consistency purposes in this proposal.

(b) Any confusion about intent should be removed in the ISR regarding violations, as arguably the language would require that a violation not only be willful and knowing but also put human health and safety at risk.

Rejected. The Department believes that no change is needed in the ISR to the justification and rationale for the proposed adoption of section 1190.4 (Violations). The Department's ISR complies with section 11346.2 of the Government Code.

(c) The grease hauler should be required to leave one copy of the receipt with the generator.

Accepted. The Department published a 15-day notice of modified text for section 1190.3 to clarify that a receipt, or a copy, shall be provided to the generator when the grease is collected.

18) Comment (G), Assemblyman Frommer, California State Legislature.

(a) In the Department's ISR, the factual basis does not acknowledge the 27 grease hauler prosecutions district attorneys have brought since 2001, as those prosecutions were the basis for legislation calling for the regulations.

Rejected. The number of prosecutions did not serve as a basis for this proposal. The purpose, basis, and rationale for this proposal are clearly stated in the ISR included in this filing (and as updated by the Final Statement of Reasons). The Department's ISR complies with section 11346.2 of the Government Code.

(b) Health, safety and environmental damage concerns are not discussed until the purpose of section 1190.2 on page three, and recommend these be included in the factual basis and purpose respectively.

Rejected. The purpose, basis, and rationale for this proposal are clearly stated in the ISR included in this filing (and as updated by the Final Statement of Reasons). The Department's ISR complies with section 11346.2 of the Government Code.

(c) Insurance requirements must be strengthened; if the Department does not have this authority, then request recommendations on how this can be accomplished legislatively.

Rejected. The issue of insurance requirements for transporters of inedible kitchen grease is outside the scope of this proposal. However, AB 1065 (Stats. 2005, Ch. 533), effective January 1, 2006, requires transporters to obtain an insurance policy or surety bond as a condition of registration.

(d) The Governor's veto message (AB 2633, 2004) referenced the Department to develop regulations in cooperation with the California Integrated Waste Management Board and request information about this collaboration and Cal/EPA's feedback on the proposed regulations.

Accepted. The pre-notice recommendations from Cal/EPA and the Integrated Waste Management Board were considered by the Department in formulating this proposal. Their recommendations and information was added to the rulemaking file and properly noticed for a 15-day availability and comment period pursuant to section 11347.1 of the Government Code. Additionally, the Department received written comments from these agencies during the 45-day public notice and comment period, and their comments are included in this filing.

19) Comment (F), Linda Sheehan, Executive Director, California Coastkeeper Alliance, believes that the definition of "generator" should be broadened beyond a food handling facility to include multi-family dwellings with grease interceptors.

Accepted. The Department published a 15-day notice of modified text for section 1190.1(b) to include any location where grease is collected from a grease interceptor or grease trap.

20) Comment (L), Mitchell A. Ebright, Vice President and General Counsel, Baker Commodities, Inc., stated that to facilitate a manifest system, each transporter/collector could be given a unique series of manifest numbers. For example, Baker Commodities Inc., could prefix all of its manifest numbers with

BC to signify Baker Commodities Inc., and its manifests could then be "BC123456", etc.

Accepted. The Department published a 15-day notice of modified text for sections 1190.2 and 1190.3 to make provisions for companies using their own manifest and receipt numbering system. The numbering system shall be submitted to the Department for approval prior to its use.

21) Comment (M), Terrie Mitchell, Manager, Stakeholder Relations, Sacramento Regional County Sanitation District, stated that section 1190.2(b) allows an authorized facility to receive interceptor waste without a manifest from the transporter, but requires the receiving facility to notify the Department within 24 hours of this omission. It is not clear what liability the receiving facility assumes for accepting this waste. This provision as currently written opens the door for transporters to illegally transport interceptor waste. This is in direct conflict with subsection (a) which states that a transporter shall not transport interceptor waste without a properly maintained manifest. Recommend deleting subsection (b) entirely.

Accepted. The Department agrees with the commenter, as liability for an incomplete or absent manifest should be placed on the transporter, and not on receiving facilities. The Department published a 15-day notice of modified text to delete subsection (b) from section 1190.2. The text, as amended, now makes it clear that transporters are responsible for having a properly maintained manifest when transporting the grease waste to an authorized receiving facility.

***Written Comments Received Regarding the First 15-Day Notice
of Modified Text and the Department's Responses***

22) Comment (N) letter dated August 2, 2005, Morgana Trenholm, Atlas Pumping Service, offered their full support of this project and advocated implementing a statewide manifesting procedure for grease transporters. They recommended that a manual, rather than electronic, manifest would be more efficient in the long run.

Accepted, in part. The Department acknowledges the support of Atlas Pumping Service. However, the Department believes that allowing both a paper (manual) system and an electronic system for tracking grease waste removal, transport, and disposal would best serve the industry, as many businesses already utilize both paper and electronic tracking systems.

23) Comment (O) letter dated August 3, 2005, Terrie Mitchell, Manager, Stakeholder Relations, Sacramento Regional County Sanitation District.

(a) As stated in the previous comments dated June 1, 2005, many Publicly Owned Treatment Works (POTWs) currently accept grease interceptor waste

at their facilities (e.g., at their headworks or septage dumping stations). Although the Department modified the definition of an "authorized facility" to include landfills or wastewater treatment facilities, the revised text is very problematic, in that it requires that the facility's waste discharge requirements (WDR) to expressly allow for the treatment or disposal of grease. A facility's WDR is the facility's permit that is issued by the Regional Water Quality Control Board. These permits are only issued (at a minimum) every five years and take a tremendous amount of time to prepare, negotiate and issue. Furthermore, these permits do not stipulate what types of waste or materials a POTW can receive, but rather it stipulates effluent limits that the POTW must meet prior to discharging their treated wastewater. It is up to the POTW to design a system to meet the effluent limits specified. Therefore, it is inappropriate to have the WDR specify whether the POTW can accept grease. Under the current proposed definition, it may create more illicit grease dumping since many POTWs will no longer be able to accept grease because it is not expressly stipulated in their WDR. Therefore, propose specifying POTWs in the definition of an authorized facility to receive grease waste.

Accepted. The Department published a second 15-day notice of modified text to specify publicly owned treatment works and to remove the requirement that the facility's waste discharge requirements expressly allow for the treatment or disposal of grease in sections 1190.1 and 1190.3.

(b) Section 1190.2(a)(3) requires the authorized facility receiving the interceptor waste to complete a portion of the manifest and sign it, unless the receiving facility uses an automated system. They recommend the transporter complete the manifest regardless of whether the receiving facility has an automated system. Receiving facilities should not have the responsibility or liability to verify the information provided on the manifest, nor have to provide the qualified staff to oversee this activity. This could have significant staffing and cost impacts to receiving facilities. Facilities would need to hire and train, at a minimum, an additional staff person to oversee this activity resulting in cost impact of over \$100,000 per year per receiving facility. We do not believe the health or environmental risks associated with grease waste warrants this type of oversight by the receiving facility. Grease waste is not a hazardous waste. The suggested modifications to this section would still provide documentation illustrating the proof of delivery of interceptor waste, but with less cost impacts and burden to the receiving facility.

Rejected. The Department does not believe that eliminating oversight by the facility receiving the grease waste is a viable alternative to section 1190.2. For the manifest system to be of value, each person/entity in the process must have some accountability. At time of removal of the grease waste, the transporter completes the manifest and signs the form and provides a receipt (or a copy) with the generator. When the transporter arrives at the authorized receiving facility to dispose of the grease waste, the receiving facility must verify (by signature or automated receipt) the volume or quantity of interceptor waste received, the date

and time the load was received, and include the inedible kitchen grease serial number of the transporting vehicle.

The manifest system is designed to reconcile the amount of interceptor waste initially removed from the interceptor or trap, with the amount of gray water reinserted (if allowed, as specified), and the amount of interceptor waste retained, transported, and delivered to a receiving facility.

The Department does not believe that obtaining one signature from a receiving facility representative, or obtaining an automated receipt, would be difficult or as costly as anticipated by the commenter. Many companies already have a tracking system in place for receiving and processing grease waste, and if not, then a tracking system should be implemented consistent with this proposal.

If sole responsibility for recording the amount of interceptor waste pumped, transported, and delivered to receiving facilities lies with the transporter, there is no check to prevent unscrupulous transporters from entering false information on the manifest and the manifest system will fail to accomplish its objective, which is the prevention of improper disposal of interceptor waste.

Also, the Department does not agree with the statement that "health and environmental risks associated with grease waste do not warrant this type of oversight by the receiving facility". The Department has developed these regulations precisely because of the health and environmental risks associated with interceptor waste. The Department believes that confirmation of the amount of interceptor waste delivered to receiving facilities is necessary to prevent improper disposal of such waste, which could result in health and environmental hazards.

(c) Section 1190.2(a)(5) should be clarified to ensure that local sewer collection systems and wastewater agencies (including POTWs) have the authority to demand transporters immediately make available any of their manifests for review. This authority is clearly necessary to prevent illicit dumping of grease into the sewer system which could result in a sanitary sewer overflow. Local sewer authorities currently have purview over any discharges to their system and expressly prohibit any discharges that could harm the sewer system or result in a blockage that could cause an overflow. Accordingly, having accessibility to transporters' manifests will help ensure grease waste is being properly disposed of and that transporters are not engaging in the practice of illicit dumping.

Accepted. The Department published a second 15-day notice of modified text for section 1190.2 to include officials from local sewer authorities to the list of persons/entities that may view all manifests and receipts.

(d) Section 1190.3(a) has been modified to authorize gray water to be reinserted into a grease interceptor or grease trap if permitted by a local authority. The process of "decanting" is of concern to many POTWs and

sewer collection agencies. The term "local authority" is vague, and may lead to confusion to grease transporters. Only the local sewer authority should authorize this decanting activity and the text should be changed to specify this authority.

Accepted, in part. As stated previously, gray water is any water that has been used in residential homes, restaurants, stores, etc., except water from toilets. Dish, shower, sink, and laundry water comprise 50 to 80% of residential waste water. This may be reused for other purposes, such as, landscape irrigation. Gray water, or the water portion of grease waste, is also derived from these sources. The Department does not have the statutory authority to eliminate the practice of reinserting the water portion of the grease waste back into interceptors or traps. However, while such reinsertion does occur and these proposed regulations do not expressly authorize or prohibit such reinsertion, the Department recognizes that local sewer authorities may prohibit this practice in certain areas of the state. Therefore, the Department published a second 15-day notice of modified text for sections 1190.2 and 1190.3 to specify that water reinserted into a grease trap or interceptor, if allowed by local sewer authorities, must be documented on the manifest.

(e) The manifest form itself should again be modified. Specifically, the section that requires the transporter to document the volume of gray water returned to the interceptor should have a statement that includes the caveat "if allowed by the local sewer authority". This would minimize any confusion or ambiguity for transporters.

Accepted, in part. The Department's manifest form has been further modified for consistency with the proposed regulatory text, and the form was included in the mailing of the second 15-day notice of modified text. However, the Department rejects the specific changes recommended above. The manifest is not designed to include regulatory text verbatim, nor is the Department mandating that its own forms be used. Each facility may use their own forms, as long as the facility, at a minimum, includes the information required by sections 1190.2 and 1190.3.

24) Comment (P) letter dated August 4, 2005, Richard V. York, Superintendent, Water Pollution Control, Public Works Department, City of Millbrae, stated that the City of Millbrae, Water Pollution Control Plant, recently embarked on a project to generate electricity using sour methane gas produced biologically within our anaerobic digesters. They intend to increase the onsite production of methane, thus electricity, by adding inedible kitchen grease to our anaerobic digestion process. It is important to the citizens of Millbrae that their effort to receive inedible kitchen grease and convert it to electricity be allowed under the regulations. As modified section 1190.1 (Definitions) excludes the Millbrae publicly owned treatment works (POTW), or any other POTW, from receiving inedible kitchen grease because they do not, nor anticipate, having explicit language in their permit (waste discharge requirements) to allow the treatment and disposal of grease. It is a foregone conclusion that material entering the sanitary sewer system has a good chance of ending up at the POTW. Therefore,

the current modified text is appropriate for a landfill operation, but not a POTW. They recommend an additional modification to the text by specifically adding POTW's to section 1190.1.

Accepted. The Department published a second 15-day notice of modified text to specify "publicly owned treatment works" in sections 1190.1 and 1190.3.

25) Comment (Q) letter dated August 9, 2005, Sharon Green, Tri-TAC Chair, Sanitation Districts of Los Angeles County.

(a) The revised definition of an authorized facility is very problematic and will severely limit disposal options available for grease waste. The definition requires that publicly owned treatment works to expressly allow for the treatment or disposal of grease in their waste discharge requirements. A facility's waste discharge requirements is the facility's permit that is issued by the Regional Water Quality Control Board. The permits are issued every five years and take a tremendous amount of time to prepare, negotiate and issue. These permits do not stipulate what types of waste or materials a publicly owned treatment works can receive, but rather it stipulates effluent limits that the treatment facility must meet prior to discharging their treated wastewater. It is up to the treatment facility to design a system to meet the effluent limits specified. Therefore, it is inappropriate to have the waste discharge requirements specify whether the public owned treatment works can accept grease.

Accepted. The Department published a second 15-day notice of modified text to specify publicly owned treatment works that accept the direct receipt of grease waste in section 1190.1 (Definitions). The Department also deleted the requirement that such facilities have discharge requirements that expressly allow treatment or disposal of grease.

(b) The definition of gray water is confusing. Gray water is commonly defined as domestic wastewater; therefore, recommend that the definition be revised to define gray water as decant liquid and include that it is the liquid portion of interceptor waste after the separation process.

Accepted, in part. The Department agrees that the definition (section 1190.1) is confusing regarding gray water, and it is terminology that does not pertain to this regulation. "Gray water" is the water portion of the grease waste. Therefore, the Department published a second 15-day notice of modified text to delete the definition of gray water, and add clarifying language to section 1190.3(a) and (c)(5) and (7) to specify the "water portion" of interceptor waste.

(c) Section 1190.2 requires the authorized facility receiving the interceptor waste to complete a portion of the manifest and sign it, unless the receiving facility uses an automated system. The transporter should complete this documentation regardless of whether the receiving facility has an automated

system. Facilities would need to hire and train, at a minimum, an additional staff person to oversee this activity, resulting in cost impacts of over \$100,000 per year per receiving facility.

Rejected. The Department does not believe that eliminating oversight by the facility receiving the grease waste is a viable alternative to section 1190.2. For the manifest system to be of value, each person/entity in the process must have some accountability. At time of removal of the grease waste, the transporter completes the manifest indicating the volume of grease waste removed and the amount of water returned to the interceptor or trap (if any) and signs the form. When the transporter arrives at the authorized receiving facility to dispose of the grease waste, the receiving facility must verify (by signature or automated receipt) the volume or quantity of interceptor waste received, the date and time the load was received, and include the inedible kitchen grease serial number of the transporting vehicle.

(d) Section 1190.2 should be clarified to ensure that local sewer collection systems and wastewater agencies, including publicly owned treatment works, have the authority to demand transporters immediately make available any of their manifests for review.

Accepted. The Department published a second 15-day notice of modified text for section 1190.2 to include officials from local sewer authorities in the list of persons/entities that may view all manifests and receipts.

(e) Section 1190.3, the term "local authority" is vague and may lead to confusion to grease transporters. Only the local sewer authority should authorize the reinserting of gray water into interceptors. Ms. Green submitted revised text for section 1190.3 to include that no materials, including decant liquid may be reinserted into the grease interceptor or grease trap unless specifically allowed by the local sewer authority (e.g., wastewater treatment plant, or a city, county or utility district that has jurisdiction over the sewer conveyance or treatment system).

Accepted, in part. The Department published a second 15-day notice of modified text for section 1190.3 to specify that transporters may return the water portion of interceptor waste into the grease trap only if permitted under local authorities, as specified. The Department does not believe that the term "decant liquid" is appropriate. Decant liquid is the water portion of the grease waste, and the Department believes the text, as modified, is clear and understandable to the affected public.

(f) Recommend that the manifest be modified to include the term "decant liquid" and the practice only be permitted if "allowed by the local sewer authority".

Rejected. The Department modified the manifest for consistency with the second 15-day notice of modified text to specify the "water" portion of the grease waste. The term "decant liquid" is not an accurate term for this regulation. As stated, decant liquid is the water portion of the interceptor grease waste, and the modified text reflects this clarification. Also, the Department does not have authority to prohibit reinsertion of the water portion of interceptor waste. The text requires documentation of such reinsertion if the practice is allowed by the local sewer authority.

26) Comment (R) letter dated August 9, 2005, Dario Frommer, Assembly Majority Leader, Assembly, California Legislature.

(a) Retention time for manifests and receipts. Assemblyman Frommer recognized that the Department lacks the statutory authority to extend the record retention time beyond one year. He urged the Department to seek legislation to extend the retention period to at least three years. Also, he believes that the submission of manifests to the Department or another governmental agency is vital to ongoing enforcement. Should these regulations be adopted, he urged the Department to closely monitor how the submission process works and make its findings known to the Legislature.

The Department may consider Assemblyman Frommer's recommendations for future consideration. However, AB 1065 (Stats. 2005, Ch. 533, effective January 1, 2006) extended the record retention period from one year to two years in Food and Agricultural Code section 19303.

(b) Gray water retention. Assemblyman Frommer stated that he supports the Department's effort to close a loophole by requiring that the hauler document on the manifest the amount of gray water reinserted, and by placing the authority to determine this practice under local control. However, he believes that the business community and the environment are best served by a statewide standard of best management practices, which includes a prohibition on the reinsertion of gray water. He understands that the Department believes this authority to regulate the practice of reinserting gray water lies with other agencies and programs. Assemblyman Frommer is making an effort to address this practice through other means, and appreciates the Department's continued assistance.

The Department accepts Assemblyman Frommer's statements and acknowledgment that, at this time, the Department does not have the authority to prohibit, by regulation, the reinsertion of gray water (i.e., water portion of grease waste) into an interceptor or trap.

***Written Comments Received Regarding the Second 15-Day Notice
of Modified Text and the Department's Responses***

S) Letter dated October 7, 2005, Mitchell A. Ebright, Vice President and General Counsel, Baker Commodities, Inc.

(a) The concept of estimated quantities has been removed from the proposed text. We believe that this is not practical as we cannot accurately measure the volume or weight in the field. We can only estimate the volume collected based upon the size of the container we removed the product from.

Rejected. The Department believes that using the word "estimated" in relation to the volume or quantity of grease waste removed from an interceptor or trap, could create a loophole in the regulations. Transporters must record on the manifest the total working capacity of the interceptor (gallons), the volume pumped (gallons), the volume of water returned (gallons), and the total waste removed (gallons). The intent is for the transporter to accurately record the grease waste received from a generator and transported to an authorized receiving facility. The volume of grease waste can be reconciled with the working capacity of the interceptor, so generators may have assurance that the grease waste was completely removed from the interceptor, and the amount of the water portion that was returned to the interceptor (if any, as specified in this proposal).

(b) The text in sections 1190.3(a) and (c)(7) do not read correctly. The local authority qualifier language should precede the permitting language, rather than follow it.

Rejected. The Department believes the wording is clear and understandable to the affected public.

(c) Section 1190.2(a)(3), electronic copies of manifests are permitted, however, no such permission is granted for electronic copies of receipts. This should be corrected by insertion of the same permitting language in the receipt text or by moving the permissive language to a sentence following both the manifest text and receipt text and making sure that it modifies both texts.

Accepted. The Department made a nonsubstantive change by moving text in section 1190.2(a)(3) to indicate that both manifests and receipts may be kept by the transporter in paper and/or electronic formats. This change is consistent with the intent and meaning of the manifest and receipt system, to allow companies to use both electronic and paper systems.

T) Letter dated October 18, 2005, Chuck Weir, Tri-TAC Chair, East Bay Dischargers Authority.

(a) Tri-TAC have significant concerns with three remaining aspects of the modified text. If these concerns are not addressed, these regulations will not meet the intended purpose of AB 1065, which is to protect the environment, to

reduce sanitary sewer blockages, and to prevent the improper and illegal transportation and disposal of inedible kitchen grease.

Rejected. The Department believes this proposal, as adopted, is consistent with the intent of AB 1065 (Stats. 2005, Ch. 533, effective January 1, 2006).

(1) Receiving facilities should have limited responsibility and liability with respect to completing the manifest. The transporters should complete all portions of the manifest under penalty of perjury. The receiving facility personnel's signature on the manifest should represent confirmation that a hauler delivered a load detailed in the corresponding manifest, not the content or the volume of the load.

Rejected. The Department does not believe that this recommendation is a viable alternative to section 1190.2. For the manifest system to be of value, each person/entity in the process must have some accountability. At time of removal of the grease waste, the transporter completes the manifest and signs the form and provides a receipt (or a copy) with the generator. When the transporter arrives at the authorized receiving facility to dispose of the grease waste, the receiving facility must verify (by signature or automated receipt) the volume or quantity of interceptor waste received, the date and time the load was received, and include the inedible kitchen grease serial number of the transporting vehicle.

The manifest system is designed to reconcile the amount of interceptor waste initially removed from the interceptor or trap with the amount of gray water reinserted (if allowed, as specified) and the amount of interceptor waste retained, transported, and delivered to a receiving facility.

If sole responsibility for recording the amount of interceptor waste pumped, transported, and delivered to receiving facilities lies with the transporter, there is no check to prevent unscrupulous transporters from entering false information on the manifest and the manifest system will fail to accomplish its objective, which is the prevention of improper disposal of interceptor waste.

(2) Transporters must perform a complete pump out of a grease interceptor to remove all grease, greasy liquids, and solids from the grease interceptor or grease traps each time an interceptor is pumped. This is essential to ensure the integrity of a system that will properly track the disposal of grease interceptor waste.

Rejected. The Department does not have the statutory authority to require the food processing establishments to utilize or maintain grease interceptors or traps. However, some city municipal codes do require interceptors to be installed and maintained regularly (e.g., Upland Municipal Code section 5860.5), and require that installation and design conform to the Uniform Plumbing Code 2000.

Under this proposal, the transporter is to document on the manifest the volume of grease waste that is removed, the working capacity of the interceptor, and the volume of the water portion returned to the interceptor, if allowed under local authority, as specified. The manifest (and corresponding receipt) is designed to provide generators with documentation of the volume of grease waste that was removed from the interceptor or trap.

(3) The Department requires that the local authority must approve the practice of decanting. This practice should not be permitted at any time because decanting will negate the entire proposed manifest system.

Rejected. As stated previously, decanting, or the returning of the water portion of the grease waste into the interceptor or trap, is not prohibited by the Food and Agricultural Code. Therefore, the Department does not have the statutory authority to prohibit the reinsertion of water into a grease interceptor or trap. However, if this practice is prohibited under local authority, as specified in this proposal, then it is the transporter's responsibility to comply with any local ordinances.

U) Letter dated October 18, 2005, Terrie Mitchell, Manager, Stakeholder Relations, Sacramento Regional County Sanitation District, stated that section 1190.2 requires the authorized facility receiving the interceptor waste to complete a portion of the manifest and sign it, unless the receiving facility uses an automated system. They believe the requirements should be the same regardless of whether or not the receiving facility is automated or has a "manned" gate. They recommend the transporter complete this manifest documentation. They do not object to having the receiving facility document proof of delivery of interceptor waste. However, the receiving facilities should not have the responsibility or liability to verify the information provided on the manifest, nor have to provide the qualified staff to oversee this activity. This could result in cost impacts of over \$100,000 per year per receiving facility. Furthermore, they do not have the means to verify the quantity of interceptor waste received from the transporter. It is industry practice to assume transporters disposing of grease waste to a publicly owned treatment works are at full capacity, and as a result, they are charged for a full load. Therefore, it is to the transporter's advantage to ensure they have a full load prior to disposal. They do not believe the health or environmental risks associated with grease waste warrants this type of oversight by the receiving facility, grease waste is not a hazardous waste.

Rejected. As previously stated, the Department does not believe that eliminating oversight by the facility receiving the grease waste is a viable alternative to section 1190.2. For the manifest system to be of value, each person/entity in the process must have some accountability. At time of removal of the grease waste, the transporter completes the manifest and signs the form and provides a receipt (or a copy) with the generator. When the transporter arrives at the authorized receiving facility to dispose of the grease waste, the receiving facility must verify (by signature or automated receipt) the volume or quantity of interceptor waste received, the date and time the load was

received, and include the inedible kitchen grease serial number of the transporting vehicle.

The manifest system is designed to reconcile the amount of interceptor waste initially removed from the interceptor or trap, with the amount of gray water reinserted (if allowed, as specified), and the amount of interceptor waste retained, transported, and delivered to a receiving facility.

The Department does not believe that obtaining one signature from a receiving facility representative, or obtaining an automated receipt, would be difficult or as costly as anticipated by the commenter. Many companies already have a tracking system in place for receiving and processing grease waste, and if not, then a tracking system should be implemented consistent with this proposal.

If sole responsibility for recording the amount of interceptor waste pumped, transported, and delivered to receiving facilities lies with the transporter, there is no check to prevent unscrupulous transporters from entering false information on the manifest and the manifest system will fail to accomplish its objective, which is the prevention of improper disposal of interceptor waste.

Also, the Department does not agree with the statement that "health and environmental risks associated with grease waste do not warrant this type of oversight by the receiving facility". The Department believes that confirmation of the amount of interceptor waste delivered to receiving facilities is necessary to prevent improper disposal of such waste, which could result in health and environmental hazards.

Finding of Necessity for Report

The paperwork, reporting, and record keeping requirements apply to persons or businesses engaged in the business of transporting inedible kitchen grease in California. The Department finds that it is necessary for the health, safety, and general welfare of the people of California that this regulation requiring a report applies to businesses.